



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

ELP
Docket No. 2282-99
24 November 1999

[REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10, United States Code, Section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 23 November 1999. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that you enlisted in the Marine Corps for three years on 5 February 1964 at age 18. The record reflects that on 2 April 1964 the Commandant of the Marine Corps (CMC) notified your command that a comparison of its records with a Federal Bureau of Investigation report indicated that you had procured your enlistment through fraud by concealing a police record.

On 5 May 1964 you were notified that you were suspected of a fraudulent enlistment due to failure to disclose a pre-service police record. You were advised of your procedural rights and that you could be discharged under other than honorable conditions by reason of misconduct. You requested to be represented by counsel and to present your case to a board of officers. You made a voluntary statement expressing a desire to remain in the Marine Corps. You claimed the recruiter was aware of your pre-service arrest record and when police record checks came back negative, you pointed out that they had been sent to the wrong city.

On 11 May 1964 the commanding officer recommended that the fraudulent enlistment be waived due to your satisfactory completion of recruit training coupled with the positive recommendations for retention by the chain of command.

On 27 May 1964 you appeared before a board of officers with counsel. The board found you had been arrested for stealing gas and received one year of probation. You claimed that you told recruiting personnel of your civil conviction, but the police record check sent out by the recruiter came back negative because they were sent to the wrong city. When you were asked by the board if you had learned your lesson and would you steal again, you replied that you could not answer that because it depended on the situation. You stated that if you needed gas for your car or money, you did not feel that it was wrong to steal. You further stated that you would not steal big things but that it was all right to take what you needed. The board recessed and referred you to the depot psychiatrist for evaluation.

You were reported in an unauthorized absence (UA) status on 1 June 1964. The board of officers reconvened on 2 June 1964 and noted that you were UA and had been interviewed by the depot psychiatrist prior to going UA. The depot psychiatrist determined that you were able to distinguish right from wrong and were neither neurotic or psychotic. The board opined that your retention would be an unacceptable moral and security risk and recommended that you be separated with an undesirable discharge. The discharge authority approved the board's recommendation and you were declared a deserter on 30 June 1964.

On 22 July 1964 the discharge authority requested authority to effect your discharge in absentia while you were in a desertion status. CMC authorized the discharge and you were discharged under other than honorable conditions on 31 July 1964.

In its review of your application the Board carefully weighed all potentially mitigating factors such as your youth and immaturity, limited education, and the fact that it has been more than 35 years since you were discharged. The Board noted your explanation regarding the civil arrest and your contentions that you told the recruiter that you had been arrested for stealing gas; you went UA because you were scared of going to prison, but turned yourself in only to find that you had already been discharged; and that the discharge you received was unfair.

The Board concluded that the foregoing factors and contentions were insufficient to warrant recharacterization of your discharge given your failure to disclose a pre-service arrest and the 61 day period of UA which was terminated only by your discharge. Your contention that fear of prison was a motivating factor for

your UA is without merit since a board of officers could not impose punishment but only recommend discharge. The Board noted you had an opportunity to show the board of officers why you should be retained or discharged under honorable conditions. However, it appeared that your integrity was suspect when the board of officers referred you for interview by the depot psychiatrist and your subsequent UA showed a further lack of character. This Board concluded that your discharge was proper and no change is warranted. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director